IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NAVIN BAROT,	:	
	:	
Plaintiff	:	
	:	Civil Action No:
V.	:	4:14-cv-00673-MWB
	:	
SUSQUEHANNA PHYSICIAN SERVICES	:	
D/B/A SUSQUEHANNA HEALTH	:	Honorable Matthew W. Brann
MEDICAL GROUP,	:	
DIVINE PROVIDENCE HOSPITAL OF THE	:	
SISTERS OF CHRISTIAN CHARITY,	:	
SUSQUEHANNA HEALTH SYSTEM,	:	
and SUSQUEHANNA PHYSICIAN	:	
SERVICES,	:	
	:	*Electronically Filed*
Defendants	:	
	:	

PLAINTIFF'S RESPONSE TO DEFENDANTS'
STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Plaintiff respectfully submits the following Response to Defendants' Statement of Material Facts Not in Dispute (Doc. 65).

1. ADMITTED

2. ADMITTED.

3. ADMITTED.

4. ADMITTED.

5. ADMITTED.

6. ADMITTED.

7. DENIED. Defendants mischaracterize the record. Plaintiff did not state that he did not want SHMG to recruit a second gastroenterologist. The testimony and email cited state simply that Plaintiff had concerns about having two gastroenterologists at once and the impact on volume.

8. ADMITTED.

9. ADMITTED.

10. ADMITTED.

11. DENIED as stated. The Medical Director contract pertained to Plaintiff's duties as Medical Director of DPH. Any legal characterization of Plaintiff as "an administrator of sorts" is specifically denied.

12. ADMITTED.

13. ADMITTED.

14. DENIED as stated. While it is admitted that Plaintiff consulted with Scott DeMint during the negotiation of the Employment Agreement, it is specifically denied that Mr. DeMint "represented" Plaintiff. Further, any characterization of Mr. DeMint's professional background is specifically denied.

15. ADMITTED.

16. It is admitted that Plaintiff spoke with individuals employed by Defendants at various times during the negotiation state of the Employment Agreement. Defendants have not cited to any

particular discussions, and therefore Plaintiff is not able to respond specifically to whether discussions were had with each of the individuals listed in Paragraph 16.

17. ADMITTED.

18. Admitted in part and denied in part. By way of further response, while Mr. Turri and Plaintiff did negotiate specific terms of the contract, other personnel on behalf of SH and Plaintiff were also involved in the negotiations. For instance, Mr. Young and Plaintiff's attorney, Mr. Lovecchio, had discussions during the negotiations. (Deposition of Kenneth Young, Doc. 82, Ex. A, 23:8 – 26:14)

19. Admitted in part and denied in part. It is admitted that Mr. Turri sent Plaintiff a letter on March 25, 2009. The content of that letter speaks for itself and any interpretation inconsistent with the language of the letter is specifically denied. Further, the legal significance or accuracy of Mr. Turri's statement is denied.

20. ADMITTED in part and denied in part. It is admitted that as a result of the ongoing and further contract negotiations, the language proposed in the March 25, 2009 letter by Turri was modified to include language that would allow plaintiff to receive compensation above the 90th MGMA percentile. The content of Plaintiff's employment agreement speaks for itself and any interpretation inconsistent with the language of the agreement is specifically denied.

21. Admitted in part and denied in part. It is admitted that a document was initially provided to Plaintiff to show examples of commonly used billable CPT codes and RVU values. However, it is denied that the document referenced by Defendants, found at Doc. 65-3, Exhibit 2-C, D-15, is the document originally provided to show commonly used billable CPT codes and RVU values.

The Medicare fee schedule does not provide RVU values associated with the conscious sedation codes 99144 and 99145, although the codes exist on the fee schedule. (Doc. 62-17, 21:19 – 22:2) Mr. Rupert was asked by Mr. Turri if he could find an RVU value for codes related to conscious sedation, 99144 and 99145. (Doc. 62-17, 20:3 – 21) Mr. Rupert spoke with Jerome Floyd to obtain RVU values for the conscious sedation codes. (Doc. 62-17, 24:16 – 25) Mr. Floyd added the values of 1.28 and .52 for the conscious sedation codes 99144 and 99145, respectively, to the chart on page D-15. (Doc. 62-17, 29:2 – 30:13; Doc. 62-6, D-15)

22. DENIED. By way of further response, the Gastrointestinal Relative Value Units 2007 Document was the product of negotiation with respect to the RVU values for CPT Codes 99144 and 99145, which were supplied by Mr. Floyd at the request of Mr. Turri. (Doc. 62-17, 20:3 – 21, 21:19 – 22:2, 24:16 – 25, 29:2 – 30:13) Dr. McCauley testified that the codes 99144 and 99145 were added at Plaintiff's request in an effort to be "collaborative" with Plaintiff. (Deposition of William McCauley, MD, Doc. 65-4, 59:12 – 61:2)

23. DENIED. The testimony cited states that Mr. Turri told Plaintiff that SHMG could attach the Gastrointestinal Relative Value Units 2007 Document to his contract.

24. DENIED. By way of further response, the Gastrointestinal Relative Value Units 2007 Document was an attachment to Plaintiff's Employment Agreement. (Doc. 62-25, pp. D-51, D-55 through D-56, "Dr. Barot feels he should receive credit for all IV CS WRVU's as per the attachment on his contract (see Attachment 1, page 2).") Additionally, the incentive compensation formula in

Plaintiff's Employment Agreement indicates that Plaintiff will get credit for "Actual WRVU worked." (Doc. 62-6, page D-4)

25. DENIED. By way of further response, the Medicare fee schedule does not provide RVU values associated with the conscious sedation codes 99144 and 99145, although the codes exist on the fee schedule. (Doc. 62-17, 21:19 – 22:2) Although Medicare does not provide reimbursement for CPT codes 99144 and 99145, other payers would provide reimbursement for those codes. (Ex. Q, 26:15 – 28:14) Mr. Rupert was asked by Mr. Turri if he could find an RVU value for codes related to conscious sedation, 99144 and 99145. (Doc. 62-17, 20:3 – 21) Mr. Rupert spoke with Jerome Floyd to obtain RVU values for the conscious sedation codes. (Doc. 62-17, 24:16 – 25) Mr. Floyd added the values of 1.28 and .52 for the conscious sedation codes 99144 and 99145, respectively, to the chart on page D-15. (Doc. 62-17, 29:2 – 30:13; Doc. 62-6, D-15)

26. Admitted in part and denied in part. It is admitted that Mr. DeMint sent Plaintiff an email on April 1, 2009; however, Mr. DeMint's email of April 1, 2009 is a written document that speaks for itself. Defendants' characterization of Mr. DeMint's email is inaccurate. Mr. DeMint did not state that a legitimate legal concern existed; rather, he stated that SHMG may be very concerned legally. Further, Mr. DeMint is not an attorney and is not a position to make a legal determination as to whether SHMG's legal concerns, if any, would be valid.

27. Admitted in part and denied in part for the reasons stated in Paragraph 26 above. By way or further response, in 2007, CMS eliminated the reference to salary surveys (such as the MGMA

standards used by Defendants) from the definition of FMV under the Stark regulations. 72 Federal Register 51015 (September 5, 2007).

28. ADMITTED.

29. Admitted in part and denied in part. Admitted that in page D-80, Mr. Turri states that, "You will receive RVU credit for what you bill;" however, this is in relation to a comment about language regarding the physician assistant. Plaintiff's Employment Agreement states that,

> Physician will receive WRVU credit in a manner agreed to (in writing and as an addendum to this Agreement) by Physician and SHMG, and approved by SH Administration, for the professional clinical services rendered by any Physician Assistant or Certified Registered Nurse Practitioner assigned to Physician's practice and supervised by Physician for purposes of calculating incentive compensation for the relevant contract year.

(Doc. 62-6, page D-4)

However, the addendum for services rendered by a Physician Assistant or Certified Registered Nurse was never added to Plaintiff's contract because SHMG did not hire any Physician Assistant or Certified Registered Nurse which would have generated additional RVUs for Plaintiff. (Deposition of Jim Turri, Doc. 65-3, 61:15 – 62:17) Therefore, this statement is irrelevant to the actual implementation and administration of Plaintiff's Employment Agreement.

30. ADMITTED.

31. ADMITTED that Mr. Turri sent an email with the quoted language; however, that language was not intended to set the parameters of how Plaintiff's Employment Agreement would be implemented or administered. Rather, that email was talking about options for how the contract would

be written, including that the parties can "work out the details on the WRVU values" and can switch to a cash based program at any time.

32. ADMITTED.

33. ADMITTED.

34. DENIED. This is a deliberate mischaracterization of Plaintiff's testimony. Plaintiff was expressing disappointment that SHMG did not live up to its promises how it represented the contract would be administered. By way of further response, Plaintiff's Employment Agreement did not address the CPT codes that are in dispute any differently than CPT codes for other type of procedure performed by Plaintiff. (Doc. 62-6)

35. ADMITTED.

36. ADMITTED.

37. ADMITTED.

38. ADMITTED but not relevant to the issues in controversy. Paragraph 4 relates only to Base Salary, and sub-paragraph 4.B., which is where the cited language is found, deals only with base salary for years four and five of the contract, which were never reached.

39. ADMITTED.

40. ADMITTED.

41. ADMITTED.

42. DENIED. The Susquehanna Medical Group Employed Physician Compensation is not referenced anywhere in the Employment Agreement. (Doc. 65-3, Ex. 2-C)

43. DENIED. The “Physician Compensation Plan” was enacted on March 7, 2011, which was almost two years after Plaintiff’s Agreement was signed. (Doc. 65-2, Ex. 1-B, D-26; Doc. 65-3, Ex. 2-C, D-1) On April 13, 2010, Mr. Turri discussed that the medical group was working with a consultant firm to develop a standardized way to fairly compensate physicians. Mr. Turri testified that SHMG was trying to develop a more consistent standardized way for all physicians to be compensated because there were a number of different ways SHMG did it and it was confusing and sometimes caused extra work. However, such a plan would not have had any effect on Dr. Barot’s contract because Dr. Barot’s contract was “signed and sealed.” (Doc. 62-23, Practice Review, D-312; Doc. 62-3, 81:14 – 82:10) With respect to the Compensation Committee, the “Susquehanna Health Medical Employed Physician Compensation” policy, not the “Physician Compensation Plan,” is the only document that would have controlled the performance or operation of the Physician Compensation Committee. (Doc. 62-26, 5:19 – 6:19)

44. ADMITTED, but irrelevant. The “Physician Compensation Plan” was enacted on March 7, 2011, which was almost two years after Plaintiff’s Agreement was signed, as discussed in Paragraph 43 above. (Doc. 65-2, Ex. 1-B, D-26; Doc. 65-3, Ex. 2-C, D-1)

45. ADMITTED, but irrelevant. Plaintiff’s Incentive Compensation formula is based on WRVU’s “worked,” not WRVU’s “coded.” (Doc. 62-6, D-3 through D-4)

46. ADMITTED, but irrelevant. Plaintiff’s Incentive Compensation formula is based on WRVU’s “worked,” not WRVU’s “coded” or “billed.” (Doc. 62-6, D-3 through D-4)

47. ADMITTED. By way of further response, Paragraph 19 also indicates that in the event of a material breach, a party may terminate after thirty (30) days' written notice if the breach is not cured. (Doc. 62-6, D-10 through D-12)

48. ADMITTED.

49. ADMITTED.

50. ADMITTED only to the extent that Paragraph 26 of the Agreement reads as stated. Any characterization of Paragraph 26 is specifically DENIED.

51. ADMITTED.

52. ADMITTED.

53. ADMITTED only to the extent that Paragraph 9 of the Medical Director Contract reads as stated. Any characterization of Paragraph 9 is specifically DENIED

54. ADMITTED.

55. ADMITTED.

56. DENIED. The records cited by Defendants do not indicate that Dr. McCauley attended the practice review on October 13, 2009; nor does the review make any mention of unsatisfied patients or complaints from referring physicians.

57. ADMITTED that Ms. Beucler testified to such a meeting and the document identified as Exhibit 6-A in Doc. 66-3 was provided by Defendants.

58. ADMITTED to the extent that the document identified as Exhibit 6-A in Doc. 66-3 reflects such a discussion. By way of further response, it is specifically DENIED that Plaintiff had problems with documentation and a regard for patient safety.

59. DENIED. The document identified as Exhibit 3-A in Doc. 65-4 does not reflect the averment made by Defendants.

60. ADMITTED to the extent that the document identified as Exhibit 3-B in Doc. 65-4 reflect such a discussion. By way of further response, it is specifically DENIED that Plaintiff provided insufficient and/or inappropriate rendering of care to patients.

61. DENIED as stated. Exhibit 2-F to Defendants' Statement of Facts (Doc. 65-3) is a memo dated December 2, 2010. By way of further response, Exhibit 2-E to Defendants' Statement of Facts purports to be minutes of a Practice Review from April 13, 2010. It is admitted that the minutes state, "Jim Turri explained the process that will need to be followed when he meets with the physician committee board for their approval." It is specifically DENIED that any representation of the "process" that may have been describe by Mr. Turri on April 13, 2010 was consistent with the terms of the Employment Agreement that was negotiated between Plaintiff and Defendants. Rather, as discussed at length in Plaintiff's Brief in Support of his Motion for Partial Summary Judgment (Doc. 63), SHMG attempted to rewrite and reinterpret Plaintiff's Employment Agreement after it became aware of the compensation Plaintiff's production was generating.

62. ADMITTED in part and DENIED in part. It is admitted that the minutes state, "It was mentioned that an area that could potentially present an issue is the compensation Dr. Barot receives

for conscious sedation, because there is no reimbursement to the medical group from the insurance payers for that service." It is specifically denied that any representation made by Mr. Turri on April 13, 2010 was consistent with the terms of the Employment Agreement that was negotiated between Plaintiff and Defendants. Rather, as discussed at length in Plaintiff's Brief in Support of his Motion for Partial Summary Judgment (Doc. 63), SHMG attempted to rewrite and reinterpret Plaintiff's Employment Agreement after it became aware of the compensation Plaintiff's production was generating. In fact, Steve Johnson specifically admitted that Plaintiff's Employment Agreement was "payor blind," meaning that RVU calculations and the issue of payment rates, whether they are Medicare or a third-party insurance rate or private payors, were two different things. (Doc. 62-2, 82:23 – 83:8)

63. DENIED. Exhibit 6-B to Doc. 66-3 is undated and unsigned, and therefore is it impossible to determine whether Defendants' averment is accurate.

64. DENIED as stated. Defendants have not produced or cited to evidence to support its averment. By way of further response, it is specifically DENIED that any representation made by Dr. McCauley on May 14, 2010 regarding the Compensation Committee was consistent with the terms of the Employment Agreement that was negotiated between Plaintiff and Defendants. Rather, as discussed at length in Plaintiff's Brief in Support of his Motion for Partial Summary Judgment (Doc. 63), SHMG attempted to rewrite and reinterpret Plaintiff's Employment Agreement after it became aware of the compensation Plaintiff's production was generating.

65. ADMITTED that Plaintiff made a remark similar in nature to the quoted remark. Denied that the statement cited is a direct quote from Plaintiff insofar as Defendants' citations do not reflect a direct quote from Plaintiff.

66. ADMITTED in part and DENIED in part. In the passage cited by Defendants, Mr. Turri testified he did not recall having a discussion with Plaintiff regarding whether he would be compensation for the sedation codes, but he may have. (Doc. 65-3, 74:6 – 75:8)

67. ADMITTED that Mr. Johnson wrote the letter described by Defendants which generally states what Defendants have described. By way of further response, the letter also suggested that Plaintiff's compensation would be reviewed in September or October 2010, yet the first time the Defendants reviewed Plaintiff's compensation for payment above the 90th percentile was not until March 2011. (Doc. 65-2, Ex. 1-C)

68. ADMITTED in part and DENIED in part. It is admitted that the minutes represent what has been put forth by Defendants. It is specifically denied that any representation made by Mr. Buttorff on June 8, 2010 was consistent with the terms of the Employment Agreement that was negotiated between Plaintiff and Defendants. Rather, as discussed at length in Plaintiff's Brief in Support of his Motion for Partial Summary Judgment (Doc. 63), SHMG attempted to rewrite and reinterpret Plaintiff's Employment Agreement after it became aware of the compensation Plaintiff's production was generating. In fact, Steve Johnson specifically admitted that Plaintiff's Employment Agreement was "payor blind," meaning that RVU calculations and the issue of payment rates, whether

they are Medicare or a third-party insurance rate or private payors, were two different things. (Doc. 62-2, 82:23 – 83:8)

69. DENIED. The document reflected in Exhibit 4-F (Doc. 66-1) and discussed in Plaintiff's Deposition cited by Defendants, represents itself to be minutes of a meeting only between Plaintiff, Dr. McCauley and Brian Buttorff. The documents reflected in Exhibits 4-G and 4-H of Doc. 66-1 appear to be minutes of meetings that did not include Plaintiff. By way of further response, with respect to the meeting between Plaintiff, Dr. McCauley and Brian Buttorff, the deposition testimony cited by Defendants reflects only that Plaintiff recalled attending a meeting, but did not recall discussion of the subject areas described by Defendants. Additionally, it is specifically denied that Plaintiff's performance was unsatisfactory.

70. DENIED. The deposition testimony cited by Defendants reflects only that Plaintiff recalled attending a meeting, but did not recall discussion of the subject areas described by Defendants. Additionally, it is specifically denied that Plaintiff's performance was unsatisfactory.

71. DENIED. The deposition testimony cited by Defendants reflects only that Plaintiff recalled attending a meeting, but did not recall discussion of the subject areas described by Defendants. Additionally, it is specifically denied that Plaintiff's performance was unsatisfactory.

72. ADMITTED only that Exhibit 6-C to Doc. 66-3 and Exhibit 4-I to Doc. 66-1 purport to reflect minutes of such a meeting; however, Plaintiff's testimony, as cited in Defendants' Paragraph 73, indicates that he does not recall such a meeting, and Plaintiff did not sign the minutes cited by

Defendants in Paragraph 73. Further, it is specifically denied that Plaintiff failed to perform duties that were outlined in his Medical Director Contract.

73. ADMITTED only that Exhibit 4-I to Doc. 66-1 purports to reflect minutes of such a meeting; however, Plaintiff's testimony, as cited by Defendants, indicates that he does not recall such a meeting, and Plaintiff did not sign the minutes cited by Defendants. Plaintiff did recall at one point being told that he was not "a good fit."

74. DENIED. The record cited by Defendants states only that Plaintiff did not recall the discussion.

75. DENIED. In the testimony cited by Defendants, Plaintiff recalled Mr. Reynolds telling him that he was not a good fit, but Plaintiff did not testify that he agreed with Mr. Reynolds' statement.

76. ADMITTED that Exhibit 4-J of Doc. 66-1 appears to be minutes of a meeting as stated by Defendants, although Plaintiff's cited testimony was that he did not recall a meeting on that date.

77. DENIED. The minutes reflect discussion of 7 topics: FY 2010 Statistics, Grown/Services, Turnaround, Block/Start Time, Tracking no-shows/cancels, Direct Access Colonoscopy and Consolidate Unit.

78. ADMITTED that Exhibit 9 (Doc. 66-6) appears to be minutes of a meeting as stated by Defendants.

79. DENIED. Exhibit 3-C to Doc. 65-4 is an unauthenticated, unsigned hearsay document without any supporting testimony.

80. ADMITTED.

81. ADMITTED.

82. ADMITTED.

83. DENIED. Defendants averments are not consistent with the testimony cited. Plaintiff did state in the cited testimony that a large number of hours were not billed.

84. DENIED. Defendants averments are not consistent with the testimony cited. Plaintiff did not state in the cited testimony that he did not complete the forms. He stated that he did not always have the forms with him, and that a large number of hours were not billed.

85. ADMITTED in part and DENIED in part. It is admitted that Mr. Turri sent the memo to Plaintiff on December 2, 2010, reflected as Exhibit 2-F in Document 65-3. It is denied that Mr. Turri's assessment of Plaintiff Employment Agreement was consistent with its terms. Rather, as discussed at length in Plaintiff's Brief in Support of his Motion for Partial Summary Judgment (Doc. 63), SHMG attempted to rewrite and reinterpret Plaintiff's Employment Agreement after it became aware of the compensation Plaintiff's production was generating. Furthermore, when questioned about the "recent Federal court rulings" referenced in Paragraph 4.b. of the memo, Mr. Turri had no idea what those Federal court rulings were. (Doc. 65-3, 98:3 – 99:10)

86. ADMITTED.

87. ADMITTED.

88. ADMITTED.

89. ADMITTED that Plaintiff received an email from Kent Nicaud on December 2, 2010. It is unclear what Defendants reference as "the same day."

90. ADMITTED.

91. DENIED as stated. It is admitted that Mr. Turri's email of December 6, 2010 suggests that Plaintiff asked Mr. Turri to ask for Mr. Young's opinion. It is unclear that Plaintiff's discussion with Mr. Turri occurred on December 6, 2010.

92. Admitted in part and denied in part. It is admitted that Mr. Turri's email reads as averred. It is specifically DENIED that any representation by Mr. Turri on December 6, 2010 was consistent with the terms of the Employment Agreement that was negotiated between Plaintiff and Defendants. Rather, as discussed at length in Plaintiff's Brief in Support of his Motion for Partial Summary Judgment (Doc. 63), SHMG attempted to rewrite and reinterpret Plaintiff's Employment Agreement after it became aware of the compensation Plaintiff's production was generating. Additionally, as discussed by Plaintiff's expert Mike Miscoe, Appendix G of the CPT Manual is not a binding guideline. (Doc. 62-32, Report Pages 8-9)

93. ADMITTED, but irrelevant.

94. ADMITTED, but irrelevant.

95. ADMITTED, but irrelevant.

96. ADMITTED, but irrelevant.

97. ADMITTED, but irrelevant.

98. DENIED. The record cited by Defendants does not reflect the averments of Paragraph 98. There is no letter cited from Plaintiff. Rather, there is a reference in the deposition to a letter from Carol Ray stating that Plaintiff's salary form Susquehanna Health for 2010 was $784,164.50. In the

email cited from Plaintiff, Plaintiff does not state his salary at all. In any event, these facts are irrelevant to Plaintiff's contract claim against Defendants.

99. DENIED. As stated in Paragraph 98, Plaintiff's email cited by Defendants does not reference his salary at all. In any event, these facts are irrelevant to Plaintiff's contract claim against Defendants.

100. ADMITTED, but irrelevant.

101. ADMITTED.

102. ADMITTED. By way of further response, Plaintiff did not accept employment or begin working at MHG until May 15, 2011. (Doc. 62-35)

103. ADMITTED in part and DENIED in part. It is admitted that the referenced email was sent. Any characterization of said email that is inconsistent with its contents is denied. By way of further response, these facts are irrelevant to Plaintiff's contract claim against Defendants.

104. ADMITTED in part and DENIED in part. It is admitted that the referenced email was sent. Any characterization of said email that is inconsistent with its contents is denied. Additionally, any suggestion that Plaintiff's testimony conceded that any dispute raised by SHMG over the compensability of the WRVU codes at issue was valid is specifically denied.

105. DENIED. The testimony cited by Defendants only reflects that Plaintiff did not have an RVU-based contract while he practiced in Indiana. Plaintiff did not testify that he did not have any prior experience with a WRVU based contract.

106. ADMITTED.

107. ADMITTED in part and DENIED in part. It is admitted that Plaintiff sent an email to Mr. Nicaud on January 19, 2011, the contents of which speak for itself. Any characterization of said email that is inconsistent with its contents is denied. By way of further response, the email referenced by Defendants also contained additional potential points for a potential employment agreement. Plaintiff's acceptance was of the terms of a letter of intent, not an employment agreement. (Doc. 66-1, 206:3 – 21) Plaintiff's employment agreement with Memorial Hospital at Gulfport was not effective until May 15, 2011. (Doc. 62-35)

108. DENIED. Plaintiff accepted the terms of a letter of intent, not an employment agreement. (Doc. 66-1, 206:3 – 21) Plaintiff's employment agreement with Memorial Hospital at Gulfport was not effective until May 15, 2011. (Doc. 62-35)

109. ADMITTED in part and DENIED in part. It is admitted that Plaintiff sent an email to Mr. Nicaud on January 19, 2011, the contents of which speak for itself. Any characterization of said email that is inconsistent with its contents is denied. By way of further response, the email referenced by Defendants also contained additional potential points for a potential employment agreement. Plaintiff's acceptance was of the terms of a letter of intent, not an employment agreement. (Doc. 66-1, 206:3 – 21) Plaintiff's employment agreement with Memorial Hospital at Gulfport was not effective until May 15, 2011. (Doc. 62-35)

110. ADMITTED in part and DENIED in part. It is admitted that Plaintiff sent an email to Mr. Nicaud on January 19, 2011, the contents of which speak for itself. Any characterization of said email that is inconsistent with its contents is denied. By way of further response, Plaintiff's acceptance

was of the terms of a letter of intent, not an employment agreement. (Doc. 66-1, 206:3 – 21) Plaintiff's employment agreement with Memorial Hospital at Gulfport was not effective until May 15, 2011. (Doc. 62-35)

111. ADMITTED.

112. ADMITTED.

113. ADMITTED in part and DENIED in part. While Defendants accurately quote Plaintiff's testimony, Defendants' characterization of Plaintiff's testimony in inaccurate and is therefore specifically denied. Plaintiff had not accepted employment with MHG as of February 8, 2011. Rather, Plaintiff's acceptance was of the terms of a letter of intent, not an employment agreement. (Doc. 66-1, 206:3 – 21) Plaintiff's employment agreement with Memorial Hospital at Gulfport was not effective until May 15, 2011. (Doc. 62-35)

114. ADMITTED in part and DENIED in part. It is admitted that Plaintiff signed the documents referenced by Defendants. However, any characterization of these documents as "employment documents" is specifically denied. Plaintiff's employment agreement with Memorial Hospital at Gulfport was not effective until May 15, 2011. (Doc. 62-35)

115. ADMITTED.

116. ADMITTED.

117. ADMITTED.

118. ADMITTED.

119. ADMITTED in part and DENIED in part. It is admitted that Plaintiff exchanged emails to Mr. Nicaud on February 22, 2011, the contents of which speak for themselves. Any characterization of said email that is inconsistent with their contents is denied.

120. ADMITTED.

121. ADMITTED.

122. DENIED that Exhibit 7-C (Doc. 66-4) states what Defendants allege.

123. DENIED as stated. The email of May 3, 2011 referenced by Defendants indicates that Plaintiff may attend and be reimbursed for a Digestive Disease Conference. Plaintiff testified that he was not afforded the opportunity to attend one CME, and in fact did not attend it. (Doc. 66-1, 113:21 – 116:7) Therefore, Defendants' characterization that SHMG "reconsidered" Plaintiff's request is denied, as there is no indication that the CME referenced in the email of May 3, 2011 is the same one Plaintiff indicated he was denied permission to attend.

124. ADMITTED.

125. ADMITTED.

126. ADMITTED.

127. ADMITTED.

128. ADMITTED.

129. ADMITTED.

130. ADMITTED in part and DENIED in part. It is admitted that the Compensation Committee met on March 10, 2011 to discuss a request for compensation for Plaintiff above the 90th

MGMA percentile. It is denied that Plaintiff ever acknowledged or agreed that the amount presented was the amount due to him, or that Plaintiff intended for the March 10, 2011 meeting to be an "initial request." (Doc. 62-7, 81:12 – 82:15; Doc. 62-3, 108:25 – 109:11)

131. DENIED as stated. The approval was for $160,560 in additional compensation, as identified in the Exhibit referenced by Defendants. The balance of paragraph 131 is admitted.

132. ADMITTED in part and DENIED in part. It is admitted that the Compensation Committee generally had the discretion to partially approve a request for compensation in excess of the 90th percentile. It is denied that Plaintiff ever acknowledged or agreed that the amount presented was the amount due to him, or that Plaintiff intended for the March 10, 2011 meeting to be an "initial request." It is further denied, for all of the reasons cited in Plaintiff's Brief in Support of his Motion for Partial Summary Judgment, that the Compensation Committee had the discretion to deny the request for additional compensation made by Mr. Turri and Dr. McCauley on Plaintiff's behalf on March 10, 2011.

133. DENIED as stated. The approval was for $160,560 in additional compensation. The balance of paragraph 133 is admitted.

134. ADMITTED.

135. ADMITTED.

136. ADMITTED that on April 15, 2011, Plaintiff, through legal counsel, sent a Notice of Intent to Terminate his Employment Agreement to SHMG. That letter is a document that speaks for

itself, and any interpretation by Defendants of the content of that letter inconsistent with its language is specifically denied.

137. ADMITTED that on April 15, 2011, Plaintiff, through legal counsel, sent a Notice of Intent to Terminate his Employment Agreement to SHMG. That letter is a document that speaks for itself, and any interpretation by Defendants of the content of that letter inconsistent with its language is specifically denied.

138. ADMITTED.

139. Denied as stated. At the Compensation Committee meeting on May 12, 2011, only RVU credit for conscious sedation code 99144 was considered, not code 99145, as reflected in the minutes provided by Defendants.

140. It is admitted only that the Committee denied any additional compensation to Plaintiff for the reasons cited by the Committee in the meeting minutes. It is specifically denied, for all the reasons cited in Plaintiff's Brief in Support of his Motion for Partial Summary Judgment, that the Committee's reasons were legal and/or in accordance with the terms of Plaintiffs' Employment Agreement or the policies and procedures of SHMG.

141. ADMITTED.

142. It is ADMITTED that a nurse gives the injection. By way of further response, any suggestion that Plaintiff did not perform the conscious sedation as defined by CPT Codes 99144 or 99145 is specifically denied. As admitted by Defendants in the Compensation Committee meeting minutes of May 12, 2010:

a) Dr. Barot **administers** moderate (conscious) sedation (IVCS) when doing endoscopy studies. The codes that are in question are 99143 - 99145.

* * *

f) . . . Dr. Barot **administered** IVCS in all of his endoscopy procedures . . .

(Doc. 62-25, D-51 through D-52)

Dr. McCauley, who is board certified in pulmonary medicine, critical care, and internal medicine, also testified that Dr. Barot performed conscious sedation during his procedures, stating, “It’s commonly done by anyone performing endoscopy at the time and also bronchoscopies that I performed.” (Doc. 65-4, 8:18 – 21, 56:14 – 24)

143. It is ADMITTED that Plaintiff’s last day of employment with SHMG was May 15, 2011.

144. DENIED. The employment agreement with MHG is undated as far as when it was signed. The effective date of the agreement was May 15, 2011.

145. ADMITTED to the extent that SHMG sent a letter to Plaintiff on May 31, 2011, informing him of the Compensation Committee’s decision to deny additional compensation. It is denied that this was Plaintiff’s “second request” for additional compensation, insofar as Plaintiff never asked SHMG to make an initial request for an amount of compensation that did not include compensation for the sedation CPT codes. (Doc. 62-7, 81:12 – 82:15; Doc. 62-3, 108:25 – 109:11) In fact, Mr. Turri admitted that he was not surprised that there was a second Compensation Committee regarding Plaintiff’s incentive compensation because the codes for conscious sedation were not included in the first request. (Doc. 65-3, 131:11 – 20)

146. DENIED. Defendants' alleged factual averment is actually a legal conclusion.

147. DENIED. Defendants' alleged factual averment is actually a legal conclusion.

148. ADMITTED, but irrelevant.

Date: March 16, 2017

Respectfully submitted,

/s/ Larry A. Weisberg

Larry A. Weisberg
Supreme Court I.D. #: 83410
2041 Herr Street
Harrisburg, PA 17103
(717) 238-5707
(717) 233-8133 (FAX)
lweisberg@mwcfirm.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Larry A. Weisberg, Esquire, hereby certify that the foregoing Plaintiff's Responsive Concise Statement of Undisputed and Material Facts has been filed electronically and is available for viewing and downloading through the Court's Electronic Case Filing (ECF) System, constituting service to all counsel of record in this matter.

Respectfully submitted,

McCarthy Weisberg Cummings, P.C.

March 16, 2017
Date

/s/ Larry A. Weisberg

Larry A. Weisberg
2041 Herr Street
Harrisburg, PA 17103-1624
(717) 238-5707
(717) 233-8133 (FAX)
lweisberg@mwcfirm.com

Attorney for Plaintiff